DECLARATION OF SERVICE BY MAIL
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I, Zack Torrenee, declare and say:

That on the 26 day of April, 2022 I deposited the following documents in the Stafford Creek Correction Center Legal Mail system, by First Class Mail pre-paid postage, under cause No. 56294-4-II:

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addressed to the following:

Washington State Court of Appeals
Division II
909 A Street
Ste 200
Tacoma, WA 98402

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED THIS 26 day of April, 2022, in the City of Aberdeen, County of Grays Harbor, State of Washington.

Signature

Zack Torrenee
Print Name

DOC 355318 UNIT H1
STAFFORD CREEK CORRECTIONS CENTER
191 CONSTANTINE WAY
ABERDEEN WA 98520

S-16

No.56294-4-II

IN THE COURT OF APPEALS OF THE STATE OF
WASHINGTON, DIVISION II

STATE OF WASHINGTON,
RESPONDENT

V.

ZACKERY CHRISTOPHER TORRENCE,
PETITIONER

From the Superior Court for Clark County
Clark County Superior Court
Cause No. 17-1-01632-2

PETITIONERS REPLY TO THE STATES SUPPLEMENTAL RESPONSE TO PERSONAL RESTRAINT PETITION PURSUANT RAP 16.10 (2)

Zackery C. Torrence Pro Se
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191 Constantine Way
Aberdeen, WA 98520

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ARGUMENT

The petitioner in this matter was denied his Sixth Amendment Right to use evidence of specific false statements or bad acts. Impeachment evidence on the only key witness the state had in this matter.

The state persuades this court that petitioner's "defense counsel was able to argue more generally about the inconsistencies in A.A's testimony". See states response pg.23.

This would be absurd to believe a defense was sound with only a "general" theory to use. When evidence exists to support specific details or instances of potential doubt or untruthfulness on the state's only key witness.

"Failing to allow cross-examination of a state's witness under ER 608 (b) is an abuse of discretion if the witness is crucial and the alleged misconduct constitutes the only available impeachment". State V. York, 28 Wn.App. 33, 621 P.2d 784 (1980).

Here there is no question regarding the material that was suppressed by the state. As provided in the appendix of the state's supplemental response. The evidence withheld left the defense counsel with a general approach of impeaching the key witness.

In Jones, the trial court barred the defendant from introducing evidence based on a rape shield statute. This court acknowledged the Hudlow requirements that evidence be minimally relevant and the required balancing of the state's interest and the defendant's need to present information. **Jones**, 168 Wn.2d at 720.

Given the facts of the case, the court held that the exclusion of evidence effectively barred Jones from presenting his defense and thus violated his Sixth Amendment Rights. Id at 721. The Court's holding was not that the Sixth Amendment protects only evidence that is of high probative value, but rather that evidence of, "extremely high probative value...cannot be barred without violating the Sixth

Amendment". Id. at 724.

This court also recently applied the Hudlow balancing test in **Orn**, 197 Wn.2d at 356-59. There the court held the defendant's Constitutional right to present a defense had been violated because the state had not made a showing that the evidence was prejudicial and the defendant's need to present the evidence greatly outweighed any purported state interest. Id.

Here, this case is the same, where the state has not provided this court with any compelling reason that the evidence they excluded was prejudicial. They only claim it was too remote in time. See state's supplemental response pg.16 at ¶1-5.

Although the state rests solely on the remoteness of time to exclude the evidence. The remoteness is not an automatic exemption. Their theory fails for two reasons. (1) The court's Rules of Evidence, Rule 608 (b) specific instances of conduct: specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness credibility, other than conviction of crime as provided in Rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross examination of the witness (1) concerning the witness character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

(2) here the record reflects the chronological events of the state's key witness in series at minimum of 4-events of evidence, of prior false statements or bad acts. Towards the end of 2016 the state's key witness made the accusations the petitioner had violated her in her youth several years prior. The relation between witness's bad acts and false statements are synonymous with her accusations of being violated years prior. Only a few months later petitioner was arrested because of the accusations made by A.A.

The state's position that remoteness in time should be enough to exclude the evidence fails. Also weighing heavily on the rules of evidence Title IV, Relevance and it's Limits. Rule 403: exclusion of relevant evidence on grounds of prejudice

confusion, or waste of time, also fails.

In State V. McSorley, the Division III Appellate Court quoted from the York Court. Stating that in a criminal case. to allow the defendant no cross examination into an important area is an abuse of discretion. It is well established that a criminal defendant is given extra latitude in cross examination to show motive or or credibility especially when the particular prosecution witness is essential to the state's case. Any fact which goes to the trustworthiness of the witness may be elicited if it is germane to the issue.

A criminal defendant's right to cross examine witness against him is a fundamental Constitutional right...concluding that "the defense should have been allowed to bring out the only negative characteristics of the one most important witness" and finding that the trial court had abused it's discretion, Division III reversed and remanded for a new trial. State V. McSorley, 128 Wn.App 612-613 (2005)(quoting State V. York, 28 Wn.App 33, 36, 621 P.2d 784 (1980).

We can also view through vertical stare decisis in the United State's V. Price. The Ninth Circuit held that the prosecutions star witness's three arrests for theft as well as a report of theft by deception, would have been admissible under Rule 608 (b) to impeach the witness's credibility. Because the jury had no other reason to doubt the witness's testimony, which was crucial, the prosecutors failure to disclose the witness criminal conduct was prejudicial. United State's V. Price, 566 F.3d 900 (9th cir. 2009).

Here the petitioners defense counsel ultimately sought admission of these incidents under IIR 608 (b). See RP 55-56, 58, 744-45. The trial court abused it's discretion by excluding this evidence under ER 403. See RP 58:19-60:2, 347: 15-350 :22, 744-745.

Because no state interest is compelling enough to exclude evidence of "high probative value". This court must perform the Hudlow test.

Under the Hudlow test, courts ask (1) whether the excluded evidence was at least minimally relevant, (2) whether the evidence was so prejudicial as to disrupt the fairness of the factfinding process at trial, and, if so, (3) whether the state's interest in excluding the prejudicial evidence outweighs the defendant's need to present it. Orn, 197 Wn.2d at 352 (citing **Hudlow**, 99 Wn.2d at 15).

This court should conclude with ease the evidence excluded in this case was at least minimally relevant. Multiple accounts of bad acts and or false statements, serves to the credibility of the key witness. Concluding that the defense counsel should have been allowed to bring out the only negative characteristics of the one most important witness.

Second, this court can view the multiple instances of conduct by the witness A.A in this case. See state's appendix. Come to the conclusion that it's probative value is "not" substantially outweighed by the danger of unfair prejudice nor would it confuse the issue or mislead the jury.

Especially here, where the state's witness was crucial and the alleged misconduct constituted the only available impeachment. This is also magnified by the state's supplemental response. They enlightened this court that defense counsel was left to "generally impeach" the witness. Hence, not able to point to specific instances, which were available but excluded.

In **Clark**, the Washington State Supreme Court held that failing to allow cross-examination of a state's witness under ER 608 (b) is an abuse of discretion if the witness is crucial and the alleged misconduct constitutes the only available impeachment. State V. Clark, 143 Wn.2d 731, 24 P.3d 1006, 1024 (2001).

Here, should be no different, an abuse of discretion is found if the trial court applies the wrong legal standard or bases it's ruling on an erroneous view of the law. Id.

This court should find under the Hudlow test petitioners claim meets the threshold finding. The trial court in this matter has erred in excluding the only available impeachment evidence.

This is reversible err.

CONCLUSION

With the above reply to the state's supplemental response. It is evident the trial court's err is not harmless.

The correct remedy is to reverse and remand for a new trial. With notation of the impeachment evidence being available for defense counsel's use however they may.

Dated this 25 day of April, 2022.

Respectfully submitted by:
Zackery C. Torrence